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**Statement of Arguments for Pre-Appeal Brief Request for Review**

**REMARKS**

Claims 21-40 are pending in the application. Claims 31-29 currently stand as withdrawn. The Advisory Action indicates that the amendments to the claims submitted in the September 1, 2010 Amendment have been entered.

**The Rejections under 35 U.S.C. § 112**

Applicants thank the Examiner for indicating in the Advisory Action that the rejection of claims 21-31 under 35 U.S.C. § 112, second paragraph, as being indefinite has been withdrawn.

**The Rejections under 35 U.S.C. § 102**

Claims 21-24, 27, 28, 30 and 40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by JP 10-014844. The grounds of rejection, in view of the claimed features of independent claim 21, allege that JP '844 teaches a device for washing and disinfecting dish and other tableware (citing the title of the document) comprising a washing container (citing Figure 1, item 2), devices for applying rinsing liquor to the items to be washed in the washing container (citing Figure 1, item 7), and a wash program.

In the March 31, 2010 Amendment, Applicants respectfully submitted that JP '844 relates to a dishwasher focused on providing lower cost and shorter wash times during the disinfection/sterilization process. In JP '844, the washing mode is the first process and is disclosed as only using water and/or detergent. JP '844 suggests the use of ozone only for a disinfection mode where ozone gas and water are brought into contact with each other in a gas-liquid mixing part 51 and scattered in the chamber through ozone atomizer nozzles 63. JP '844 discusses in paragraphs [0002] and [0009] that dishwashers use high heat to eliminate bacteria present in the utensils after washing them. That is, for a sterilization process. JP '844 suggests that rather than use high heat, that the sterilization process (after the wash cycle) be done using methods similar to those employed for sterilizing medical devices. Accordingly, Applicants respectfully submitted that JP '844 does not disclose the claimed feature of one or more devices for generating a gas having an oxidizing effect that is employed in a wash program. Rather, JP '844 teaches use of gases in the sterilization process similar to the art discussed in the present specification.

In the Advisory Action as well as the Response to Arguments in the Final Office Action, the grounds of rejection state that "a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim."

Applicants respectfully submit that JP '844 does not teach "one or more devices for generating a gas having an oxidising effect that is employed in a wash program" since its structure uses ozone only for a disinfection mode where ozone gas and water are brought into contact with each other in a gas-liquid mixing part 51 and scattered in the chamber through ozone atomizer nozzles 63. Further, JP '844 teaches away from this structure as it relates to a dishwasher focused on providing lower cost and shorter wash times.

With respect to claim 22, the grounds of rejection state that the gas having an oxidizing effect can be applied to the items to be washed in cooperation with mist in the interior of the washing container. Applicants note that JP '844 uses a mist during a sterilization process and not a wash process. As such, Applicants respectfully submit that claim 22 is allowable for its dependence on claim 21 as well as its individual mist features during the washing process. Likewise with the nebulizer of claim 23. Further, all the dependent claims are allowable at least based on their dependence on claim 21.

With respect to independent claim 40, Applicants note that it recites the feature of "the washing container being operable to receive therein ozone-enriched mist at least for cleaning items to be washed." Thus, again, since JP '844 does not disclose or suggest the use of ozone during a wash process, Applicants respectfully submit that claim 40 is allowable.

### **The Rejections under 35 U.S.C. § 103**

Claims 21-23, 25, 28 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ono (U.S. Patent No. 5,172,572) in view of JP 2003-144372. Ono relates to a dish washing machine or a washing machine that is operated under washing conditions that assess whether the detergent has been properly changed in accordance with the degree of contamination. As such, other than disclosing the general elements of a dishwasher and a washing cycle, Applicants respectfully submit that Ono is not relevant to the problem solved by the present invention. Indeed, the grounds of rejection acknowledge that Ono does not disclose or suggest a washing container being operable to receive therein a gas having an oxidizing effect that has been added to the rinsing liquor or the raw water and/or otherwise added into the interior of the washing container. However, the grounds of rejection state that JP 2003-144372 teaches a dishwasher comprising a washing container (citing Figure 10, item 2) being operable to receive therein a gas having oxidizing effect (citing the Abstract) added into the interior of the washing container for use for a partial program step having cleaning effect, so that the gas can at least be used for cleaning and disinfection (citing Figure 10 and the Abstract). As such, the grounds of rejection allege that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dishwasher of Ono by having the washing container being operable to receive therein a gas having an oxidizing effect so that the gas can at least be used for cleaning and disinfection as motivated by JP 2003-144372 to sterilize and deodorize dishes.

Applicants respectfully traverse this rejection. As argued in the March 31, 2010 Amendment, JP '372 discloses a dishwasher that uses ozone rather than high temperature for sterilizing its dishes. As discussed in paragraph [0006] of JP '372, its purpose is to sterilize food utensils without using hot water. Paragraph [0009] of JP '372 states that in its invention, since ozone has a strong oxidizing power, if ozone is supplied in a washing warehouse, after washing and it contacts food utensils, it will annihilate the various saprophytic bacteria adhering to food utensils. Thus, JP '372 does not teach using ozone in a wash cycle as in the present invention. Accordingly, Applicants respectfully submit that the claims distinguish over the combination of Ono and JP '372.

The Response to Arguments in the Final Office Action note that in response to Applicants' argument that Ono and JP '372 do not teach using gas in the washing program/process, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. As Applicants have argued above, neither reference teaches structure for using ozone in a wash cycle.

Claims 21-24 and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ono in view of JP 11-137882. Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ono in view of JP 11-137882 in further view of Veeder et al. (U.S. Patent No. 5,863,031). As discussed above, the grounds of rejection in the Final Office Action acknowledge that Ono does not disclose or suggest a washing container being operable to receive therein a gas having an oxidizing effect that has been added to the rinsing liquor or the raw water and/or otherwise added into the interior of the washing container. Yet, in the rejection, the grounds of rejection allege that JP 11-137882 teaches a dishwasher comprising a washing container (citing Figure 7, item 51) being operable to receive therein a gas having an oxidizing effect added into the interior of the washing container. The grounds of rejection further state that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dishwasher of Ono by having the washing container being operable to receive therein a gas having an oxidizing effect added into the interior of the washing container as motivated by JP 11-137882 to reduce COD (Chemical Oxygen Demand) and BOD (Biochemical Oxygen Demand) in drain water.

Applicants respectfully traverse this rejection. Applicants note that JP '882 clearly states in its Abstract and Problem To Be Solved, its purpose is to enable COD and BOD of home washer waste water to be reduced and purified to drain out without affecting the washing efficiency, by equipping a control means provided with a process to dissolve ozone from an ozone generating mechanism into washing water after the completion of a washing process using a detergent. Thus, JP '882 does not disclose the ozone wash feature of the present invention and actually teaches away from the invention.

The grounds of rejection in the Final Office Action note that in response to Applicants' argument that Ono and JP '882 do not teach using gas in the washing

program/process, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. As Applicants have argued above, neither reference teaches structure for using ozone in a wash cycle.

Further in the Response to Arguments, the grounds of rejection state that since Ono does not criticize, discredit, or otherwise discourage the adding of a device for generating a gas having an oxidizing effect as mentioned in JP '882, JP '882 does not teach away.

Applicants respectfully submit that notwithstanding the standard applied in the grounds of rejection that, for example, MPEP § 2143.03(VI) states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." Accordingly, where cited art teaches away from a claimed feature, the cited art is not available for the purposes of an obviousness rejection. In the instant case, JP '882 not only fails to teach or suggest the ozone wash feature, but further teaches away from the use thereof for the reasons discussed above. Because JP '882 teaches away from an ozone wash feature, one of ordinary skill in the art would not modify One to incorporate certain features of JP '882 in an effort to arrive at the claimed invention. Accordingly, Applicants respectfully submit that the rejection is improper and respectfully requests that the rejection be withdrawn.

Applicants also traverse the statement provided in the grounds of rejection that "since all the structures are found in the combined prior art, it is fully capable of performing the functions as recited in claims 21-22 and 24". Applicants note in since neither reference discloses use of ozone during a wash process, that the grounds of rejection's conclusion of obviousness appears to be based on improper hindsight reasoning in view of Applicant's own disclosure.

### **CONCLUSION**

In view of the above, allowance of claims 21-40 is respectfully requested. If there are any questions regarding the remarks herein, kindly contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.